

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matters of	)	
	)	
Petition of AT&T Inc. for Forbearance	)	
Under 47 U.S.C. § 160(c) from Title II	)	
and <i>Computer Inquiry</i> Rules with	)	
Respect to its Broadband Services	)	
	)	
Petition of BellSouth Corporation for	)	
Forbearance Under Section 47 U.S.C.	)	WC Docket No. 06-125
§ 160(c) from Title II and <i>Computer</i>	)	
<i>Inquiry</i> Rules with Respect to Its	)	
Broadband Services	)	
	)	
Qwest Petition for Forbearance Under	)	
47 U.S.C. § 160(c) from Title II and	)	
<i>Computer Inquiry</i> Rules with Respect to	)	
Broadband Services	)	

**COMMENTS IN SUPPORT OF RE-FILED QWEST PETITION**

First, and foremost, Qwest plainly meets the section 10 standard for forbearance from Title II and Computer Inquiry rules with respect to broadband services. Second, and also important, the principle of like regulation for similar providers of like services should be applied to Qwest's Petition for Forbearance from Title II and *Computer Inquiry* Rules with Respect to Broadband Services. That principle requires that Qwest's re-filed Petition must be granted; so too must Embarq's similar forbearance petition.<sup>1</sup> In fact, as Embarq argued in the *Embarq Forbearance Petition*, relief should be granted to all similarly-situated independent incumbent local exchange carriers (ILECs) that provide the broadband services in question. The legal and

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<sup>1</sup> *Petition of the Embarq Local Operating Companies For Forbearance Under 47 U.S.C. §160(c) From Application of Computer Inquiry And certain Title II Common-Carrier Requirements*, WC Docket No. 06-147, filed July 26, 2006 ("*Embarq Forbearance Petition*").

factual rationale set forth in the Verizon Petition for Forbearance,<sup>2</sup> and endorsed by the Commission in the recent *ACS Forbearance Order*<sup>3</sup> applies equally to Qwest and Embarq as well. Both Verizon and ACS received relief from tariff, costing, and pricing regulation in the provision of the broadband services, regardless of the nature of the customer to whom the service is offered. Qwest demonstrates in its Petition that the public interest is served by granting it similar relief, just as Embarq has demonstrated in the *Embarq Forbearance Petition*.

Indeed, the Commission relied on the like regulation for like services principle in forbearing from regulating broadband wireline Internet access for all ILECs (who chose to accept such relief) in the *Wireline Broadband Order*.<sup>4</sup> The relief was not limited just to the Regional Bell Operating Companies (RBOCs) or any other category of ILEC. Rather, the Commission made it clear that its intent was to be all inclusive, not exclusive, and that the analysis should apply generally to broadband services, not just Internet access:

As part of this policy, we believe that we should regulate like services in a similar manner so that all potential investors in broadband network platforms, and not just a particular group of

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<sup>2</sup> *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440, NEWS, *Verizon Telephone Companies Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services is granted by Operation of Law*, March 20, 2006, petitions for review pending, *COMPTTEL v. FCC*, 06-1113 (DC Cir., filed March 29, 2006) & *Sprint Nextel v. FCC*, 06-1111 (DC Cir., filed March 29, 2006).

<sup>3</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. §160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion & Order, \_\_ FCC Rcd \_\_, FCC 07-149 (2007) (“*ACS Forbearance Order*”).

<sup>4</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report & Order, 20 FCC Rcd 14853 (2005) (“*Wireline Broadband Order*”).

investors, are able to make market-based, rather than regulatory-driven, investment and deployment decisions.<sup>5</sup>

Following the like regulation for like services principle the Commission should also be guided by the *ACS Forbearance Order*, in which the Commission found that Section 10 forbearance<sup>6</sup> was appropriate for the broadband special access services in question in this proceeding and additionally, that forbearance will actually foster more competition.

We find that eliminating these requirements would make ACS a more effective competitor for these services, which in turn we anticipate will increase even further the amount of competition in the marketplace, thus helping ensure that the rates and practices for these services overall are just, reasonable, and not unjustly or unreasonably discriminatory. Forbearance from dominant carrier regulation will permit customers to take advantage of a more market-based environment for these highly-specialized services and allow petitioners the flexibility necessary to respond to dynamic price and service changes often associated with the competitive bidding process.<sup>7</sup>

The Commission especially recognized the problem of having only one special access provider in a market signal it's pricing and strategies through the tariffing requirement. This led to the forbearance from Title II dominant carrier tariffing regulation in the broadband special access market.

We find that continuing to apply dominant carrier regulation to ACS's existing broadband services would have each of these

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<sup>5</sup> *Wireline Broadband Order*, ¶ 45.

<sup>6</sup> In order to grant forbearance, the Commission must find that: (1) enforcing the regulation is not necessary to ensure that the charges, practices, classifications or regulation are just and reasonable and are not unjustly or unreasonably discriminatory, (2) enforcement of the regulation is not necessary for the protection of consumers, and (3) forbearance is consistent with the public interest. 47 U.S.C. §160(c).

<sup>7</sup> *ACS Forbearance Order*, at ¶ 107.

effects. Specifically, tariffing these services reduces ACS' ability to respond in a timely manner to its customers' demands for innovative service arrangements tailored to each customer's individualized needs. [Citation omitted.] In addition, by mandating that ACS provide advance notice of changes in its prices, terms, and conditions of service for these services, tariffing allows ACS's competitors to counter innovative product and service offerings even before they are made available to the public. In contrast, detariffing of these services will facilitate innovative integrated service offerings designed to meet changing market conditions and will increase customers' ability to obtain service arrangements that are specifically tailored to their individualized needs. Moreover, relief from advance notice requirements and cost-based pricing requirements would enable ACS to respond quickly and creatively to competing service offers. We find that tariff regulation simply is not necessary to ensure that the rates, terms, and conditions for the existing ACS-specified broadband services are just, reasonable, and not unjustly or unreasonably discriminatory.<sup>8</sup>

Furthermore, as BellSouth has previously pointed out in this proceeding, the forbearance relief granted Verizon was "based on nationwide market conditions"<sup>9</sup> because "broadband competition is national in scope."<sup>10</sup> This is even more reason why the relief sought should not be limited to Verizon and ACS but, rather, should be granted to all ILECs providing broadband services. There has been ample evidence placed on the record in this proceeding and the *Embarq Forbearance Petition* proceeding that large national carriers, not individual ILECs, like Qwest or Embarq, dominate the market.

Of particular interest is that the fact the Vertical Systems Group, a market research and strategic consulting firm specializing in the networking industry, just released its mid-year 2007

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<sup>8</sup> *ACS Forbearance Order* ¶ 106.

<sup>9</sup> *Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, WC Docket No. 06-125 at p. 3.

<sup>10</sup> *Id.* at p. 5.

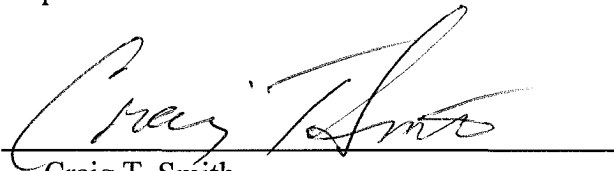
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market share results for Business Ethernet Services in the United States and identified Time Warner Telecom as the third largest Business Ethernet Service provider in the United States, only slightly behind AT&T, whose market share dropped considerably, and Verizon. Cox, one of the largest cable companies in the country was identified as the fourth largest.<sup>11</sup> Neither Qwest nor Embarq was in the top five.

Embarq respectfully requests that the Commission grant the Qwest Petition, and also that the Commission grant the *Embarq Forbearance Petition*. The Commission should grant regulatory forbearance to all ILECs that provide the broadband services in question, regardless of the nature of the customer to whom they are sold.

Respectfully submitted,

Embarq

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<sup>11</sup> Vertical System Group: Mid-Year 2007 Market Share Results for U.S. Business Ethernet Services, <http://www.verticalsystems.com/prarticles/stat-flash-0807-ethernetshare.html>.

**Certificate of Service**

I hereby certify that I have this 20<sup>th</sup> day of September 2007 served the following parties with a copy of the foregoing Comments in Support of Re-Filed Qwest Petition in WC Docket No. 06-125 by the method noted.

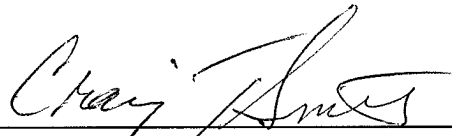
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